



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Vanderbilt Shirt Company

**File:** B-237632

**Date:** February 16, 1990

John J. Boles, for the protester.  
Louise E. Hansen, Esq., Office of the General Counsel,  
Defense Logistics Agency, and David R. Kohler, Esq., Small  
Business Administration, for the agencies.  
Barbara C. Coles, Esq., and Christine S. Melody, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

Agency properly included provision in request for proposals (RFP) requiring that the company awarded a supply contract under a small business set-aside perform at least 50 percent of the cost of manufacturing the supplies called for by RFP since provision implements the requirements of the Small Business Act.

### DECISION

Vanderbilt Shirt Company protests the inclusion of Federal Acquisition Regulation (FAR) § 52.219-14, entitled "Limitations on Subcontracting," in request for proposals (RFP) No. DLA100-89-R-0492, issued by the Defense Logistics Agency for cold weather, polypropylene drawers.

We deny the protest.

The RFP was issued on October 3, 1989, as a total small business set-aside. The solicitation contained FAR § 52.219-14, entitled "Limitations on Subcontracting," a clause which implements the Small Business Act, 15 U.S.C. § 644(o) (1988). Specifically, the "Limitations on Subcontracting" clause provides, as required by the Small Business Act, that the company awarded a supply contract under a small business set-aside is to perform at least 50 percent of the cost of manufacturing the supplies in-house, if it is not a regular dealer of those supplies.

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Since Vanderbilt seeks to certify itself as a manufacturer but to subcontract more than 50 percent of the cost of manufacturing the supplies, it filed this protest with our Office challenging the RFP's "Limitations on Subcontracting" provision.

Vanderbilt contends that a Small Business Administration (SBA) regulation, 13 C.F.R. § 121.5(b)(2) (1988), allows a firm which certifies itself as a manufacturer to subcontract 100 percent of the manufacturing operations in a total small business set-aside procurement for supplies. In pertinent part, that regulation provides as follows:

"Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is deemed to be a small business when:

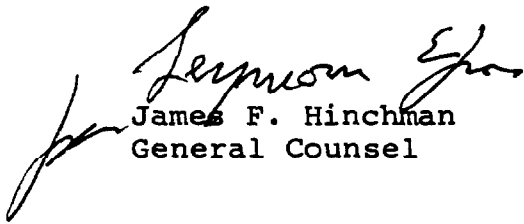
(i) In the case of Government procurement reserved (i.e., set aside) for small businesses, such non-manufacturer must furnish, in the performance of the contract, the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States. The term 'nonmanufacturer' includes a concern which can manufacture or produce the product referred to in the specific procurement but does not do so in connection with the procurement."

In effect, Vanderbilt argues that the SBA regulation, to the extent that it permits a small business bidder who is normally a manufacturer of the item being procured to subcontract for production of the item from another small business, superseded the requirement of the RFP's "Limitations on Subcontracting" clause that the offeror perform at least 50 percent of the cost of manufacturing the supplies. However, SBA, whose views were solicited by our Office in connection with the protest, states that its regulation should not be interpreted in any manner inconsistent with the statutory requirement that an offeror-manufacturer perform at least 50 percent of the cost of manufacturing supplies. We agree.

The SBA regulation predates the statutory subcontracting limitation requiring an offeror-manufacturer to perform at least 50 percent of the cost of manufacturing the supplies

that are being procured. As a result, the Small Business Act must be read as in effect limiting SBA's implementation of the nonmanufacturer rule under the regulation; hence, to the extent that there is any inconsistency between the Act and the regulation, the Small Business Act must prevail. The inclusion of the "Limitations on Subcontracting" clause in the RFP thus was proper since the clause implements the Small Business Act by providing that the company awarded a supply contract under a small business set-aside is to perform at least 50 percent of the cost of manufacturing the supplies in-house, if it is not a regular dealer of those supplies.

The protest is denied.



James F. Hinchman  
General Counsel